July 26, 2019

Kurtis Steele
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Re: Scoping Comments for Small NEPA Project Proposals (July 2, 2019 Scoping Notice) Including Oro Vega, Richardson, and Stickley Suction Dredging

Dear Mr. Steele:

Thank you for considering our scoping comments for the proposed Oro Vega, Richardson, and Stickley suction dredging projects. Since 1973, the Idaho Conservation League (ICL) has worked to protect and enhance Idaho's clean water, wilderness, and quality of life through citizen action, public education, and professional advocacy. The Idaho Conservation League has a long history of involvement with mining, and as Idaho's largest statewide conservation organization, ICL represents over 30,000 supporters who have a deep personal interest in ensuring that mining operations are protective of our land, water, fish, and wildlife.

Although we understand the Forest Service is inclined to fast-track these project proposals, the accelerated NEPA approach in this instance is misguided and inappropriate. Each of the three proposed suction dredging projects contain significant issues that warrant more complete environmental evaluations. We are concerned about categorically excluding these types of operations from further environmental review and strongly recommend that the minimal evaluation level the Forest Service conducts is an Environmental Impact Statement (EIS). More specific comments regarding these projects are found below. Our comments apply to each individual project.

Once again, thank you for the opportunity to provide scoping comments regarding these three proposals. Please keep ICL on the mailing list for all documents related to each project. We look forward to the opportunity to work with the Red River Ranger District on this, and any future projects.

Respectfully submitted,

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Idaho Conservation League's Scoping Comments for the Proposed Oro Vega, Richardson, and Stickley Suction Dredging Projects

Threatened and Endangered Species

We are especially concerned about the potential adverse effects of suction dredge mining operations to fall chinook salmon, spring chinook salmon, steelhead, bull trout, Pacific lamprey, several of which have been federally listed as either threatened or endangered species under the Endangered Species Act and inhabit the waters within, and downstream of the three project areas. Because of the prohibitions on take of ESA-listed species that utilize habitat within the areas proposed for suction dredging, it would be inappropriate for the USFS to approve suction dredge operations in these areas without further environmental review. We note that take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. Specifically, we recommend the USFS consult the US Fish and Wildlife Service and NOAA – Fisheries before advancing any of these three projects. Below we describe the potential impacts of suction dredge mining in the proposed project areas and why further consultation is warranted and necessary.

Suction dredge mining can alter the physical, chemical, and biological characteristics of streams and can also impact the geomorphic structure of streams (Kondolf, et al 1991), depending on the volume of material displaced. For example, removal and redistribution of in-stream gravels can increase water velocity, increase downstream erosion, and disturb the equilibrium of streams, thereby impacting upstream and downstream riparian habitats. These impacts from suction dredging can harm and kill threatened and endangered fish species. In fact, fall chinook spawn in and depend on the same type of gravel substrate suction dredge mining disturbs. Dredging also exposes underlying fine-particle sediments that can wash downstream, smothering sensitive spawning beds, even if none are present directly below or under dredge mining activities. Besides these potential impacts to spawning, instream dredging equipment, materials, and disturbance may inhibit fish movement. As Nielsen et al (1994) indicated, minor disturbances during the summer may harm adult salmonids when their energy supplies are at critical levels and are exacerbated by increased stream temperatures. Although each project proposes to stop mining activities by August 15, the disturbances to the streambeds of Leggett Creek and the Red River would significantly alter the substrate just prior to the fall chinook spawning season (and consequently, the bull trout spawning season), reducing the effectiveness and quality of the imperiled spawning territory. Furthermore, the USFS' scoping letter failed to analyze whether prohibiting mining activities after August 15 would ensure the protection of threatened and endangered fish and their habitat.

The projects propose suction dredging in Red River and Leggett Creek, both of which are designated Critical Habitat for several threatened or endangered species. Sediment from mining operations is likely to reach spawning beds and has the potential to harm, harass or kill salmon, steelhead and bull trout eggs and fry. The National Oceanic and Atmospheric Administration (NOAA) Fisheries Documentation already confirmed that a prior and unrelated suction dredging proposal in the Nez Perce - Clearwater National Forests would likely impact vulnerable fish species.

On June 25, 2018, NOAA Fisheries issued three letters to the Idaho Department of Water Resources (IDWR) pertaining to proposed dredge mining projects in Leggett Creek and Red

River -- the same water bodies being considered in the Proposed Action. , and I have attached copies of these letters to this document for your reference. In all three letters, NOAA-Fisheries concluded that suction dredging activities could impair and/or degrade spawning, rearing, and migratory habitat for steelhead and salmon species.

The NOAA-Fisheries letter to IDWR regarding Permit Application No. S82-20069 highlights the fact that Leggett Creek is considerably smaller than the mainstem South Fork Clearwater River, and points out that streambed alteration and disturbance may span the creek width, greatly increasing the potential adverse effects to the waterway and sensitive species habitat. As Harvey and Lisle (1996) point out, "[s]ubstrate stability is critical to spawning success of fall-spawning species because the weeks or months of embryo development in the gravel commonly coincide with the season of high flows that mobilize streambed (Holtby and Healey, 1986; Lisle and Lewis 1992)." Given Leggett Creek's size we are concerned by statements in the July 2, 2019 scoping notice that suggest suction dredging related to the Oro Vega project will involve dredging the entire width of the creek. See Proposed Action at 25, stating ""Two Areas of Interest (AOI) (150 ft. long each; *not to exceed wetted width at any point*) would be sampled using a suction dredge configured to work as a 'highbanker.'" Dredging the width of Leggett Creek for a total length of 300 feet would have disastrous consequences, including , but are not limited to:

1. Impeding salmon and steelhead movement;
2. Displacing fish from spawning habitat;
3. Reducing the availability and quality of spawning gravels;
4. Reducing egg and fry survival rates;
5. Reducing production of prey (food) species critical to salmon and steelhead survival; and
6. Reducing water quality through contamination by fuels, solvents, and increased turbidity.

Imperilling Leggett Creek in this way would negate the benefits already paid for by Idaho taxpayers in 2016, when fish passage was restored to Leggett Creek with the replacement of a culvert under State Highway 14.

Similarly, NOAA-Fisheries has concluded that suction dredging in the Red River -- the area proposed for suction dredging in the Richardson and Stickley projects -- would likely impact vulnerable fish species. The Red River is critical habitat for Snake River Steelhead (listed as Endangered) and Chinook salmon, and the second and third NOAA-Fisheries letters attached to this document both concluded that suction dredging activities in the Red River would have similar potential adverse effects as those described for Leggett Creek.

We feel strongly that consultation with the US Fish and Wildlife Service and NOAA – Fisheries is required prior to advancing these three projects. Further, the USFS scoping letter failed to evaluate how the project proposals may impact Pacific lamprey, despite the fact that this species has been documented in the South Fork Clearwater River, and therefore may have habitat in the Red River and Leggett Creek tributaries. Based on the low population levels of lamprey and their sensitive species status, it is critical that the Forest Service consider specific measures designed to protect ammocoetes that may be present within the very gravels and sediment that are targeted in the project proposals.

Recommendations

The three proposed suction dredging projects covered by these scoping comments (Oro Vega, Richardson, and Stickley) are located along two tributaries of the South Fork of the Clearwater River, and contribute to and contain critical habitat for ESA-listed Snake River steelhead and Chinook salmon. Because the proposed actions would likely significantly impact federally listed species and their habitat , the USFS' failure to complete an EIS would constitute a NEPA violation, and authorizing the advancement of these projects would be illegal. Moreover, the USFS' failure to consult with the US Fish and Wildlife Service and NOAA-Fisheries would violate the ESA. ICL recommends the Nez Perce - Clearwater National Forests withdraw these three projects from the CE process and consult with NOAA-Fisheries and USFWS regarding the potential adverse effects these projects may have on the riverine environment. Furthermore, ICL recommends the Forest Service conduct an EIS related to each of the projects and examine multiple alternatives for the proposed projects. Finally, the environmental assessments should include a hydrological examination of the effects that suction dredge mining could have on smaller tributary streams in terms of temperature and pH variables, turbidity, gravel, sand, and silt stratification, and the combined effects of modern projects with the Legacy Mining remains.

"Category 8" Concerns

The potential cumulative impacts and the use of the categorical exclusion set forth in 36 C.F.R. § 220.6(e)(8) ("Category 8") represent a significant concern for ICL. The USFS promulgated the Category 8 exemption without evaluating the direct, indirect, and cumulative impacts of the type of projects contemplated by the exemption. The USFS also failed to conduct required ESA consultation before promulgating the Category 8 exemption. These deficiencies preclude the USFS' use of the Category 8 exemption for the proposed projects without conducting further NEPA and ESA review, as has been held by the courts. We recommend the USFS perform an EIS and ESA consultation before advancing these projects.

The Ninth Circuit has held an agency's decision to establish a category of actions that are excluded from full NEPA review can only be made with a full understanding of the significance of the impacts resulting from application of the category. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1027 (9th Cir. 2007) ("The Forest Service must perform this impacts analysis prior to promulgation of the CE."). Of particular importance, "the Forest Service must perform a programmatic cumulative impacts analysis for the . . . CE." *Id*. at 1029. In *Bosworth*, the Ninth Circuit invalidated the Forest Service's reliance on a categorical exclusion that was promulgated without a complete analysis of cumulative and other impacts. The Court then enjoined projects approved pursuant to that categorical exclusion. *Id*. at 1026-1030. The same legal rule applies to the agency's failure to comply with the procedural and substantive requirements of the ESA.

In *Bosworth* the Forest Service adopted the 2003 Hazardous Fuels CE in *Bosworth* but failed to assess the cumulative impacts from future projects to be approved under the CE. As the court explained:

> "Relying solely on a project level analysis is inadequate because it fails to consider impacts from past, present, or reasonably foreseeable Fuels CE projects which may be located in close proximity, in the same watershed or endangered species habitat."

Bosworth, 510 F.3d at 1027. Moreover, the Ninth Circuit emphasized that cumulative impacts analysis "is of critical importance in a situation such as here, where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres." *Id.*, at 1028.

The same is true in the case of Category 8. The Forest Service never performed a direct, indirect or cumulative impacts analysis (or any of the required ESA consultation and analysis) on Category 8 -- routine, short-term mining investigations and their incidental support activities – and the related provisions in Chapter 30 of the Forest Service Handbook regarding extraordinary circumstances. As a result, impacts at the local, forest, state, and regional level from the mineral investigation activities authorized or covered by Chapter 30 and Category 8 were never evaluated. As in *Bosworth*, the Forest Service never reviewed the significance factors required by NEPA in assessing whether its action -- adopting a categorical exclusion and the extraordinary circumstances provision -- may have significant impacts. Accordingly, because adoption of Category 8 and Chapter 30 violated NEPA and the ESA, the Forest cannot rely upon on those provisions for the approval of the proposed exploration projects.

Not only must the Forest Service consider the cumulative impacts of these three projects currently being considered for approval under Category 8, but also consider the impacts of all projects previously approved using Category 8 which may have any cumulative impacts. Furthermore, the Forest Service must review any other past, present, or reasonably foreseeable impacts in the cumulative impacts analysis for these projects, including but not limited to:

1. Road construction;
2. Timber management;
3. Mineral exploration and development;
4. Livestock management;
5. Travel management; and
6. Wildfire, prescribed fire, or other activities.

Water Quality

Mining exploration activities have a well-documented history of adversely impacting water quality and fish populations. The proposed action may be potentially incompatible with aquatic species inhabiting this watershed. Weed-free straw bales should line any drainages to protect streams from sedimentation and be removed upon completion of operations.

The effects of mining exploration activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions. This geochemical analysis should include the following factors:

- pre-existing water quality issues from previous mining activities
- sedimentation from roads and trails
- transportation of hazardous or toxic materials near streams
- on-site water needs
- source of water
- the depth and flow of water table
- the potential for household chemicals and toxins to leach into surface and ground waters

- water capture and subsequent leakage by trenches
- waste water discharge from site
- storm water runoff

We recommend conducting a baseline water quality analysis during low-flow conditions for water sources in the project area, as well as a baseline analysis downstream from the project locations. A baseline analysis in these areas will help the Forest Service more accurately identify risks to water quality and quantity, as well as monitor for contamination during the project activities.

We also recommend that the Forest Service monitor water quality downstream of the operations for seepage and turbidity. If visible turbidity downstream from the area is triggered by the project, operations should cease for further evaluation. Additionally, we recommend prohibiting mineral sampling and/or vegetation removal within at least 75 feet of stream channels, consistent with other similar proposals.

Water Rights

If an operator plans to withdrawal or divert water for their operation, a water right must be sought and obtained from the Idaho Department of Water Resources. The Forest Service should require proof that a water right has been obtained from the Idaho Department of Water Resources *prior* to approving any plan of operations, or initiating any ground-disturbing activities. The timing of water withdrawal should be defined to avoid impacts to aquatic organisms and sensitive, threatened, and endangered species. A water right is necessary regardless if processing takes place on or off of federal lands.

Riparian Habitat and Conservation Area Protection

All operations must comply with the protective standards and regulations of INFISH, concerning mining, road construction, and tree removal. No Forest Plan amendments to suspend these requirements should be considered.

If any discharge from mining activities is anticipated to occur, effects to sensitive, threatened, and endangered species represents an extraordinary circumstance, justifying the preparation of an environmental assessment (EA) or environmental impact statement (EIS). The project analysis and decision document for any project within RHCAs should articulate project design features that demonstrate consistency with the Riparian Management Objectives contained in the INFISH and how they will be maintained and restored following project implementation.

Hazardous Materials

Because machinery will be used to transport materials and equipment to the proposed project areas, a hazardous material plan needs to be in place in the event of a fuel or solvent leak. Hazardous wastes, including grease, oil, and fuels, need to be disposed of off-site in an environmentally appropriate manner. All fuel storage should be greater than 300' from live water. We are especially concerned about the use of fuels, lubricants, solvents, and other toxic chemicals in or around streams and drainages. The use of these hazardous materials must be

carefully evaluated and an approved spill containment kit should be on-site at all times. Secondary containment systems should be in place.

Noxious Weeds

Vehicles and equipment serve as vectors for the spread of noxious weeds when proper inspection and cleaning are not practiced to limit their spread. Disturbed soil needs to be stabilized to prevent erosion and expansion of noxious weeds. All equipment should be inspected, cleaned, and washed prior to the operator entering public lands. Work crews trained in noxious weed recognition and removal should patrol the project area and mechanically remove any weeds or microtrash.

Aquatic Invasive Species

Maintaining the state and quality of Idaho waters remains one of ICL's primary goals and helps define our mission. Therefore, we recommend that all dredging equipment be allowed to fully dry a minimum of five (5) days PRIOR to being introduced to Idaho waters. Furthermore, if the equipment being used arrives from out-of-state, the supporting pontoon and all related floating equipment should be inspected, similar to boats and rafts entering the state. This is to prevent the introduction and spread of invasive species like the zebra mollusk and non-native snails and/or diseases that could damage Idaho's water quality or harm the state's fish and wildlife resources.

Fire Prevention

With the proposed activities taking place during mid-summer, there will be an increased risk of wildfire. There must be an approved fire plan and emergency equipment accessible during operations. Inspector-certified fire extinguishers should be placed in all vehicles. Handheld implements (shovels or axes) should be accessible at all operating locations, and evacuation plans should be in place for all project areas.

Reclamation and Bonding

Forest Service regulations at 36 CFR § 228 require the Forest Service to establish an adequate reclamation bond for mining operations. Bonding costs need to be detailed in the environmental analysis for each alternative.

The bond must be substantive enough to cover the worst possible impacts to the human and natural environment and at a minimum, take into consideration:

- Possible spills of fuels and other hazardous materials
- Impacts to the ecosystem
- Road decommissioning
- Mine drainage treatment in perpetuity
- Monitoring

Bonding costs should be calculated according to Forest Service pricing, including the cost of renting and transporting equipment and wages for all workers and supervisors. Alternatively, a third-party contracted by the Forest Service could calculate the bonding costs. In any event, the operator should not calculate the bonding costs.

The environmental analysis needs to describe the reclamation process and all associated costs in detail. This analysis should include the volume and type of material to be moved, equipment needed, location for stockpiling, and sequence for reclamation. To the extent practical, reclamation activities should take place concurrently with the mining operation.

Monitoring

We have encountered numerous mining projects that have violated best management practices (BMPs) and operating plans and monitoring protocols and triggers were not in place to take corrective action in a timely manner. A formal monitoring plan should be developed in relation to each of these projects. The monitoring plan should be described in the decision document and the full plan should be included in the project file.

Monitoring should be conducted at specified intervals throughout the mining operation and reclamation. Monitoring should be tailored to relevant metrics, including substrate disturbance water quality, and distance between dredging operations. Monitoring should also include specific soft and hard triggers by which the next set of actions is already determined, such as a warning notice that a hard trigger is being approached, a Notice of Violation, and a suspension of the permit. The Forest Service should establish noise limits such that disturbance to surrounding wildlife and property owners is minimized, and require the operator to abide by these limits. Seasonal limitation may also apply, where species-specific habitat needs could be affected by the project.

References

Harvey, B.C. and T.E. Lisle. 1998. Effects of suction dredging on streams: a review and an evaluation strategy. *Fisheries Habitat*. 23(8):8-17.

Holtby, L.B. and M.C. Healey. 1986. Selection for adult size in female coho salmon (*Oncorhynchus kisutch*). *Can. J. Fish. Aquat. Sci*. 43:1,946-1,959.

Kondolf, G.M, G.E. Cada, M.J. Sale, and T. Felando. 1991. Distribution and stability of potential salmonid spawning gravels in steep boulder-bed streams of the eastern Sierra Nevada. *Trans. Am. Fish. Soc*. 120:177-186.

Lisle, T E., and J. Lewis. 1992. Effects of sediment transport on survival of salmonid embryos in a natural stream: a simulation approach. Can. J. Fish. Aquat. Sci. 49:2,337-2,344.

Nielsen, J. L., T. E. Lisle, and V Ozaki. 1994. Thermally stratified pools and their use by steelhead in northern California streams. Trans. Am. Fish. Soc. 123:613-626.

Attachments

Please find three attachments from NOAA Fisheries regarding similar projects.